TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 276.

JOHNSON BLACKFEATHER, THE PRINCIPAL CHIEF OF THE SHAWNEE TRIBE OF INDIANS, FOR THE USE AND BENEFIT OF THE SHAWNEE INDIANS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 19, 1903.

(18,455.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 17, 1902.

1 Court of Claims.

JOHNSON BLACKFEATHER, the Principal Chief of the Shawnee Tribe of Indians, for the Use and Benefit of the Shawnee Indians,
vs.
THE UNITED STATES. } No. 17210.

I.—*Petition and Amended Petition.*

On the 28th day of September, 1891, the claimant filed his original petition and on the 3d day of August 1892, he filed, in lieu of said original petition, by leave of court, his amended petition which is as follows:

Amended Petition.

Filed August 3, 1892.

To the honorable the judges of the Court of Claims:

1. Your petitioner, Johnson Blackfeather, represents and states that he is fifty years old, a Shawnee Indian by blood and descent, a member of and the principal chief of the Shawnee tribe or nation of Indians, by occupation a farmer; that he resides at or near Vinita, Delaware district, Cherokee nation, Indian Territory.

2. Petitioner further states that he brings this suit in this Court of Claims, as such principal chief of the said Shawnee tribe or nation of Indians, under the provisions of the act of Congress entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation,
2 and for other purposes," approved October 1, 1890, and an act entitled "An act supplementary and amendatory to an act entitled 'An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation, and for other purposes, approved October 1, 1890,' approved July 6, 1892," to recover and collect from the United States Government the several, respective and aggregate amounts of money herein alleged and set out in payment for the destruction, loss, forcible taking, carrying, and driving away live stock, farm products, household goods, money, and other personal property of divers descriptions and kinds belonging to, owned and possessed by, and the property of the said Shawnee Indians, by white and United States citizens and soldiers, in the State of Kansas and the Indian Territory at divers times and places in the year 1861 and all the time up to and including the year 1866, as more fully appears in the following descriptive list or schedule, setting out the names of the said Shawnees, the property of which they and each of them were despoiled as aforesaid, and the amounts of money claimed for the price or valuation here named by the said claimants, and that the said amount, as to a portion of the said claims, is the amount ascertained by the Secretary of the Interior and by him transmitted to Congress

in the month of January, 1867, with a recommendation that the said amount be paid as to the portion so transmitted at said time, which amount is $109,746.25. (Reference is made to Exhibit D, hereto attached, for the authenticated copy of the letter of the Commissioner of Indian Affairs and the Secretary of the Interior, and as to the additional claims herein alleged and claimed in the said descriptive list and schedule reference is further made, as showing the action, allowance, and findings in all of the said claims, to House of Representatives Executive Document No. 125, 49th Congress, first session; Schedule B, beginning on page 275, continuing on all the subsequent pages, and ending on page 279, inclusive.)

3 SCHEDULE B.

A List of Claims in Favor of Shawnee Tribe of Indians on Account of Depredations Committed by White Citizens since the Treaty of 1854, and for Losses of Property During the Late War.

(Treaty 1854, articles 11 and 14, and sections 2154 and 2155, Revised Statutes.)

No. of claim.	Name of claimant.	Kind of property taken.	Value of property taken.
348	Rogers, Graham	Horses, mules, produce, &c	$2,556 00
349	Barbee, William	Horses, provisions, &c	1,310 00
359	Rogers, William	Mules and money	200 00
360	Dougherty, Martha	Horses and money	602 00
361	Maden, Solomon	Horses, ponies, and hogs	552 00
362	Harvey, John	Horse, mule, and colt	260 00
363	Harvey, Caleb	Two mares, saddles, bridles, hogs	1,390 00
364	Cau-chi-qua	Horses	610 00
365	Red Carpenter	Household goods, hogs, &c	350 00
366	Choteau, Frederick	House burned, groceries, &c., taken.	3,965 00
367	Todd, James, for Frances White	Horse, cow, hogs, &c	312 00
368	Chouteau, Benjamin	Buggy, horses, &c	1,195 00
369	Chouteau, William	Horses and cattle	440 00
370	Pitcher, Mary	Cattle, horses hogs, &c	602 50
371	Sua-qau-coh	Horses and hogs	775 00
372	Saaly Fly	Horse, saddle, colt, &c	260 00
373	Silverheels, Moses	Jewelry and hogs	265 00
374	Widow Wheeler	Cattle, hogs, &c	365 00
375	Barnett, Sally Ann	Horse and cow	165 00
376	Tucker, Charles	Horses, &c	750 00
377	Wheeler, James	Horses and saddle	180 00
378	McLean, Henry	Horse, saddle, &c	221 00
379	McLean, John	Horses, mule, and cattle	950 00
380	Borele, John	Horses, household goods, &c	2,215 00
381	Tiblou, James	Horses, clothing, &c	947 00
382	Deshane, David	Horse, steer, &c	200 00
383	White, Joseph	Horses, mules, &c	3,244 00
384	Wheeler, John	Pony	80 00
385	Wheeler, Polly	Horse and mule	250 00
386	Coffey, Lewis	Mules, horses, &c	1,755 00
387	Britton, Mary	Horses, ponies, &c	265 00
	Carried forward		$27,331 00

Schedule B—Continued.

No. of claim.	Name of claimant.	Kind of property taken.	Value of property taken.
	4 Brought forward		$27,331 00
388	Keyser, James	Horses, cattle, &c	1,140 00
389	Coffey, Mary	Do.	2,060 50
390	Big Fox	Horses, furniture, &c	1,890 00
391	Dougherty, David	Horses, hogs, &c	1,082 00
392	White, Frances	Horses, mules, &c	536 00
393	White, Henry	Horses, cows, &c	800 00
394	Blackhoof, Eli	Horses, mules, &c	915 00
395	Dushane, Eli	Horses, mares	545 00
396	Flint, Veaty	Horse, ponies, &c	620 00
397	Barlow, John	Horses, cattle, &c	615 00
398	Chuck-thee	Do.	332 00
399	Rogers, Betsey	Horse, mule, &c	390 00
400	Quinney, Jane	Horses	600 00
401	Prophet, Sally	Horses and mares	1,650 00
402	Graham, Polly	Mare and cattle	220 00
403	Silverheels, John	Horses, cattle, &c., house burned	2,050 00
404	Longtail, Elizabeth	Horses, rails burned, &c	1,670 00
405	Bob, Jane	Horses, cattle, &c	412 00
406	Coster, Nancy	Horses, double wagon, &c	320 00
407	Dushane, Martha	Horses	245 00
408	Perry, James	Horses, &c	480 00
409	Perry, Betsy	Horses and ponies	530 00
410	Dougherty, Elizabeth	Horses and mares	1,020 00
411	Randall, Eliza	House burned, horses, &c., taken	5,650 00
412	Bluejacket, David	Horses, ponies	235 00
413	Swatzell, Catherine	Horses, mules, carriage, &c	2,921 50
414	Vogel, Rebecca	Clothing, silverware, &c	1,360 00
415	Batly, Mary E	Horses, hogs, &c	540 00
416	Dick, Joseph	Horses	480 00
417	Dushane, David J	Horses, rails, corn, &c	1,110 00
418	Fox, John	Horses, oxen, &c	680 00
419	Covnatzer, Samuel M	Horses, cattle, &c	1,975 00
420	Nan-nee-a	Furniture and stock	195 00
421	Hummingbird, Cyntha	Horses	205 00
422	Flint, Joseph	Horses and hogs	450 00
423	Pumpkin, Mrs	Mules and hogs	500 00
424	Pumpkin, John	Horses, harness, &c	520 00
425	Deshane, Henry	Horses, mules, &c	625 00
426	Walton, Anna E	Household furniture, &c	1,226 00
427	Rogers, Polly	Horses and cattle	745 00
428	Whitefeather, Jacob	Horses, mules, &c	1,695 00
	Carried forward		$68,586 00
	5 Brought forward		$68,586 00
429	Jackson, John	Horses, &c	485 00
430	Flint, Haney	Clothing, &c	100 00
431	Big Knife, James	Horse	75 00
432	David, Laura	Mare and saddle	120 00
433	Spybock, Eunice	Horses and hogs	390 00
434	Harvey, James	Horses	700 00
435	Frances, George	Do.	550 00
436	Blanchard, Nancy	Do.	300 00
437	Big Knife, Jane	Do.	380 00
438	Skybuck, Widow	Horses, &c	120 00

Schedule B—Continued.

No. of claim.	Name of claimant.	Kind of property taken.	Value of property taken.
439	Possom, John	Horses	$260 00
440	Bigbone, Nancy	Horse, cattle, &c	385 00
441	Elliott, James	Clothing, corn, &c	451 00
442	Charles Tiblow	Horses, &c	425 00
443	James Longtail	Horses and cattle	830 00
444	Elizabeta Longtail	Hogs, &c	110 00
445	Jesse Whitideer	Cattle, horses, &c	1,640 00
446	George Whiteday	Horses, hogs, &c	530 00
447	Martha Dougherty	Heifer, &c	22 00
448	Hannah Rogers	Horses, &c	410 00
449	Nancy Prophet	Grain, &c	650 00
450	Pate-thump-qua	Cattle	60 00
451	William Whiteday	Horses, &c	610 00
452	William White	Horses	350 00
453	Jack Horn	Horse and ponies	570 00
454	Catherine Johnson	Clothing and furniture	252 00
455	Joseph Johnson	Horses, &c	440 00
456	Sanule Tucker	Horse	120 00
457	James Blackfeather	Horses and cattle	1,085 00
458	David Blackfeather	Horses, cattle, &c	1,750 00
459	George Cohen	Horses	230 00
460	Sarah Big Knife	Horses, mules, &c	480 00
461	Thomas Big Knife	Horses	985 00
462	John Dougherty	Horse and saddle	145 00
463	John Perry	Horses	1,495 00
464	Harriett Purcell	Do.	325 00
465	Samuel Garrett	Cattle	225 00
466	Susanna Armstrong	Horses	480 00
467	Polly McDougall	Do.	200 00
468	Eliza Mills	Horses, &c	345 00
469	Stephen Bluejacket	Horses, farming implements, &c	761 00
470	Frances Chautau	Horses, hogs, &c	425 00
	Carried forward		$89,852 00
	6 Prought forward		$89,852 00
471	Toto Whitestone	Horses, &c	210 00
472	Silos Flint	Horses	280 00
473	James Bone	Horses, &c	600 00
474	Mary Blackbody	Do.	358 00
475	Billy Greenfeather	Do.	400 00
476	Lewis McLean	Horses and pony	115 00
477	Edward Crane	Horses	440 00
478	Lewis McLean	Money	75 00
479	Thomas Blackhoof	Horses	175 00
480	William McHearn	Horses, &c	430 00
481	William Frances	Money	100 00
482	General Jackson Rogers	Horse	175 00
483	Ellie Dunn	Saddle	22 00
484	Henry F. Rogers	Horses, mules, &c	664 00
485	Sally Rogers	Do.	445 00
486	Susan Dougherty	Horse, saddle, &c	170 00
487	John Barlow	Hogs	200 00
488	John Parks	Horses, mules, &c	1,195 00
489	George Big Knife	Horses and grain, &c	4,563 00
490	Susan Big Knife	Horses, &c	335 00
491	Mary Johnson	Corn	50 00

Schedule B—Continued.

No. of claim.	Name of claimant.	Kind of property taken.	Valde of property taken.
492	George Dougherty	Grain, &c	$317 00
493	Choteau, William	Horses, &c	465 00
494	Armstong, William	Horses and mule	310 00
495	Spybuck, Frank	Horses	200 00
496	Baptiste, Sarah	Cow, steer, and horse	235 00
497	Summers, Mary	Horse	200 00
498	Logan, Thomas	Horse and pony	100 00
499	Flint, Joseph	Hog	20 00
500	Brown, Theresa	Household goods, clothing, &c	382 00
501	Inra Soup	Field of corn, &c	590 00
501½	Dougherty, Silas	Log houses, cattle, &c	1,296 00
502	Dougherty, Lewis	Horse and saddle	177 00
503	Bluejacket, Charles	Grain, stock, &c	858 75
504	Choceau, Benjamin	Span of horses	400 00
505	Tiblou, Zion	Horses, field of corn	1,395 00
506	Flint, Lazarus	Horses	180 00
507	Tiblow, Mary Ann	300 bushels of corn	150 00
508	Bluejacket, Nancy	Horses, ponies, &c	5,220 00
509	Ki-la-we sa, heirs of (Whiteman, guardian).	Horses, cattle, grain, &c	1,724 00
510	Caboon, George	Cattle, household goods, &c	3,604 45
	Carried forward		$118,966 75
	7 Brought forward		$118,966 75
511	Coxie, Soth	Horses, cattle, and household goods, &c.	6,797 75
512	Chisholm, F. (Jno. Deer, guardian).	Horses, cattle, corn, &c	6,436 50
513	Chisholm, W. E	Provisions, household goods, &c	9,640 00
514	Chisholm, Jackson	Horses, mules, cattle, &c	5,779 00
515	McQueen, Cinda	Horses, cattle, household goods, &c	3,733 75
516	Alberta	Horse, stock, cattle, household goods, &c.	2,504 25
517	Jim Deer	Do.	9,409 85
518	John Deer	Horses, cattle, provisions, &c	11,506 60
519	Wright, Jimmy	Horses, cattle, farming tools, &c	1,757 50
520	Sally	Horses, cattle, corn, &c	3,255 00
521	Little Fish	Household goods, &c	775 25
522	Gibson, Wilson	Horses, stock, cattle, &c	2,067 25
523	Heir of George Blackfoot (Long Jim, guardian).	Horses, cattle, farming tools, &c	1,175 00
524	Rabbit	Horses, cattle, furniture, &c	1,160 00
525	Long Jim	Horses, cattle, farming tools, &c	1,787 50
526	Black Cat	Do.	2,152 50
527	Hill, John	Horses, cattle, farming tools, &c	1,045 00
528	Little Spoon	Stock, cattle, farming tools, &c	748 25
529	Warrive, George	Horses, cattle, &c	1,066 75
530	White Turkey	Horses, cattle, corn, &c	3,745 25
531	George Young	Do.	1,310 70
532	Hill, John (guardian of Little Wildcat).	Horses, cattle, hogs, &c	1,042 00
533	Track	Do.	1,112 75
534	John Duch	Do.	1,380 00
535	Esparnee	Do.	2,714 75
536	Rock	Do.	984 00
537	Bob Deer	Do.	7,909 25

Schedule B—Continued.

No. of claim.	Name of claimant.	Kind of property taken.	Value of property taken.
538	Hill, Anna	Horses, mules, cattle, hogs, &c.	$5,938 55
539	Jessie	Horse, cattle, household goods, &c.	1,366 60
540	Gobbler	Horses, cattle, farming tools, &c.	990 50
	Carried forward		$220,529 00
	8 Brought forward		$220,529 00
541	White, Nancy	Horses, cattle, household goods, &c.	2,665 85
542	Cologee	Horses, cattle, hogs, &c.	439 25
543	Doctor	Do.	5,259 35
544	John White, chief	Bacon, rails, &c.	5,579 62
545	John White (guardian of Little George).	Horses, cattle, &c.	2,462 20
546	Doctor Jim	Horses, cattle, bacon, &c.	4,870 00
547	Shawnee Jackson	Do.	990 50
548	John Hill	Horses, cattle, corn, &c.	5,795 10
549	Sloathe	Do.	1,829 75
550	Young Man	Horses, cattle, bacon, &c.	3,258 50
551	Jim Sloane	Do.	1,136 00
552	Sally Long Tail	Do.	2,810 00
553	Mule	Do.	740 75
554	John Tomahawk	Do.	1,180 75
555	Shawnee Buck	Horses, cattle, corn, &c.	1,926 50
556	Buckheart	Do.	1,284 50
557	Longman	Do.	1,974 25
558	Joe Billy	Do.	963 00
559	Charlie	Do.	649 00
560	John Sinney	Horses, cattle, mules, hogs, &c.	2,385 75
561	Mrs. McLaughlin	Horses, cattle, corn, &c.	1,297 60
562	Eliza Boots	Horses, hogs, bacon, corn, &c.	1,007 00
563	John Scott	Horses, hogs, corn, &c.	1,335 00
564	Little John	Do.	6,426 00
565	Billy Coon	Do.	1,125 00
566	Milley	Do.	446 25
567	Joe Frank	Do.	737 75
568	Henry Jackson	Do.	1,117 35
569	Nancy Buck	Do.	702 25
570	Nannie Charlie (guardian).	Horses, cattle, outhouses, &c.	506 50
571	Sam	Horses, stock, bacon, &c.	1,822 40
572	Mary Cabbage	Horses, cattle, hogs, bacon, &c.	2,382 25
573	Betsey	Horses, cattle, hogs, &c.	1,270 50
574	Coffee Pot	Do.	2,166 60
575	Jim Wagon	Do.	3,204 50
576	Jim Bull	Do.	1,142 00
577	Coffee Pot (guardian of Delaware Jack).	Do.	3,073 30
578	Jack Harris	Do.	2,736 75
579	Young Spybuck	Do.	3,143 00
	Carried forward		$304,340 92
	9 Brought forward		$304,340 92
580	Skye	Horses, cattle, hogs, &c.	3,382 75
581	Thomas Williams	Do.	3,537 00
582	Jim Bob	Do.	1,908 50
583	Strong Man	Do.	2,444 35
584	Jack Hunter	Do.	2,700 25

Schedule B—Continued.

No. of claim.	Name of claimant.	Kind of property taken.	Value of property taken.
585	Long Horn	Do.	$3,025 80
586	Red Blanket	Do.	512 25
587	Joe Harris (guardian of the heirs of Rettick).	Do.	1,844 25
588	Joe Harris	Do.	1,315 00
589	Possum	Do.	4,738 25
590	John Clark	Do.	1,445 70
591	Cabbage	Do.	1,218 40
592	Jim Cabbage	Do.	2,425 75
593	Beaver Jack's wife	Do.	3,483 00
594	Nancy Cabbage (guardian of James Walshe).	Do.	4,632 75
595	Mr. Clark	Do.	1,772 60
596	Caddo	Do.	503 00
597	Co-ta-pe a-se	Do.	1,151 75
598	Larter Harjo	Do.	1,564 50
599	Raccoon	Do.	1,216 85
600	Palmer	Do.	1,226 00
601	Cheleskee	Do.	3,072 00
602	Little Wilson	Do.	2,475 00
603	Nancy Poneaker	Do.	1,130 75
604	Sally Jim	Do.	1,642 50
605	John Cherokee	Do.	1,160 50
606	Pecan	Do.	2,071 00
607	Walshe John	Do.	4,502 00
608	Nancy Smith	Do.	763 65
609	Cherokee	Do.	4,715 50
610	Nancy Blackfoot	Do.	1,425 20
611	Eliza Pecans	Do.	1,283 00
612	Susey Woaco, Joe's widow	Do.	1,308 00
613	Nancy Joe	Do.	1,572 75
614	Jackson Clark	Do.	1,028 25
615	Young Squire Sam (guardian).	Do.	798 25
616	Cabbage (Muskogee, guardian).	Do.	1,025 75
	Carried forward		$371,461 72
	10 Brought forward		$371,461 72
617	Jimmy Ellis	Farming tools, furniture, horses, &c.	5,205 50
618	Sally Fox	Horses, cattle, hogs, &c	1,372 25
619	Shawneego	Do.	2,045 00
620	Susey Ellis	Do.	7,144 00
621	Big Jim (guardian of Jim Fly).	Do.	1,412 50
622	Sam Charley	Do.	4,953 50
623	Kitty Charley	Do.	3,858 75
624	Shawnee Jim	Do.	2,268 00
625	Sampson	Do.	4,529 50
626	Big Jim	Do.	2,692 50
627	Squirrel	Do.	1,531 00
628	Mary Gibson	Do.	1,750 00
629	Samuel Dirt	Do.	5,044 12
630	Young Selack	Do.	5,043 50
631	Jinney Beaver	Do.	1,428 50
632	Kes-se-ka	Do.	751 00

Schedule B—Continued.

No. of claim.	Name of claimant.	Kind of property taken.	Value of property taken.
633	John Taylor	Horses, cattle, farming tools, &c.	$514 50
634	Beaver Jack	Horses, hogs, house, corn, &c.	573 50
635	Mary Pecan	Horses, cattle, hogs, bacon, &c.	1,927 50
636	William Charley	Do.	2,872 00
637	Long Gibson	Do.	2,209 25
638	Jinnie Lighthorse	Do.	2,662 00
639	Fire Gibson	Do.	2,378 00
640	Betey Mahardee	Do.	1,550 75
641	Nancy Hood	Do.	8,322 60
642	Marhardee	Do.	3,285 50
643	Joe Ellis	Do.	7,149 00
644	Warrior	Horses, cattle, farming tools, &c	1,157 50
645	Nancy Long Jim	Horses, cattle, hogs, &c	2,818 00
646	Jack Ellis Milly	Do.	2,599 50
647	Jack Ellis	Do.	3,510 75
648	Dick	Do.	2,564 50
649	Sally White	Do.	3,707 00
650	John Foreman	Do.	1,594 50
651	William Selack	Do.	1,805 25
652	Jim Warrior	Do.	873 00
653	Bety Ax	Do.	455 00
654	Josiah	Do.	3,494 50
655	John Ketchum	Do.	3,453 00
	Carried forward		$483,768 44
	11 Brought forward		$483,768 44
656	Doctor George	Horses, cattle, hogs, &c.	2,697 50
657	Tom Ellis	Do.	2,829 50
658	Nancy Johnson	Do.	6,399 25
659	Le quar-passie	Mules, horses, cooking utensils, &c.	912 75
660	Julia Pecan	Horses, cattle, hogs, &c	1,188 25
661	John Fox	Do.	2,206 25
662	Old Bear	Horses, stock, hogs, &c.	405 00
663	Little Bear	Horses, cattle, hogs, corn, &c.	1,608 75
664	Tom Hood	Do.	1,316 75
665	Jim Washington	Do.	4,919 25
666	Fox	Do.	4,465 50
667	Wild Cat	Do.	3,270 50
668	Billy Taylor	Do.	698 90
669	Black Snake	Do.	1,364 75
670	Bull Frog	Do.	2,317 00
671	Doctor Robison	Do.	890 00
672	John Chickasaw	Do.	1,741 30
673	Jinney Wilson	Do.	2,308 00
674	Shawnee Betsey	Do.	2,259 50
675	Ounah-quash-see	Horses, outhouses, cattle, &c	1,192 50
676	George Fish	House, corn, horses, &c	634 00
677	Short Betsey	Horses, ponies, cattle, &c.	1,555 50
	No. of claims, 322;	aggregate amount	$530,945 14

That all of the said claims arise out of treaty relations with the United States and as rights growing out of such treaties, to wit, articles 11 and 14 of the treaty of May 10th, 1854, and acts of Congress, to wit, sections 2154 and 2155, Revised Statutes; that the said described property was taken from the said Shawnee Indians and the depredations committed against them and their property aforesaid by white men and citizens and soldiers of the United States since and after the time the said Shawnee Indians made and
12 entered into the treaty with the United States of May 10th, 1854, and while the said Shawnee Indians were located and permanently residing and living peaceably on their own lands in the said State of Kansas and the Indian Territory, to wit, in the years 1861 up to and including the year 1866, and that at the time and all the time the said Shawnee Indians were so living and residing in amity and peace with the citizens of the United States, the citizens of the several and surrounding States, and with all the Indians and Indian tribes, and that the said Shawnee Indians owned and possessed their lands in the said State and Territory under the provisions and stipulations of treaties made and entered into with the United States in the month of November, 1825, the month of August, 1831, and May, 1854, in the said State and Territory, and that they possessed and occupied said lands as their homesteads and farms, and that the said Shawnee tribe of Indians and the said Shawnee claimants herein at all times before and since the time of making and entering into said treaties have done, performed, rendered, and kept all the covenants, obligations, promises, agreements, and duties as is stipulated and provided in all of the articles of the aforesaid treaties and in all of the treaties made by and between the United States and the said Shawnee tribe, and that they have at all times abstained from the commission of depredations and complied with the laws in such cases made and provided.

3. Petitioner again states that the said Shawnee tribe of Indians and the above-named Shawnee claimants all have been always loyal and true to their allegiance to the United States Government; that in the late rebellion the said Shawnees were all loyal and true to the Union cause and a large number enlisted and served in the military service of the United States and served during the war, and that the said State of Kansas was a loyal State and never went out of the Union during the time of the late rebellion, and that
13 the said Shawnee Indians, claimants herein, nor the Shawnee tribe or nation of Indians have never sought private revenge nor have they or any of them attempted to obtain satisfaction by any force or violence on account of the taking and despoiling them, the said Shawnees, of their said property, and that no part of the said property has ever been returned to the said claimants, either or any of them, nor have they received payment for the said property.

4. Petitioner again states that the amounts of money claimed by the said Shawnees for the losses and destruction of their aforesaid property sustained and suffered by them, the said Shawnees, at the aforesaid times and places, are specified and set opposite each of the said Shawnees' names, as appears in the above descriptive list and

schedule, for which said several and divers amounts this petitioner prays judgment of this honorable court upon the facts and the law, and that the court will decree and adjudge ten per centum of the aggregate amount of the said claims to be paid to Denver & Brownell, their heirs or successors, for the payment of and compensation to them for their attorneys' fees in this case, and an additional amount to repay and reimburse them or either of them for money which they or either of them may pay and lay out in the preparation, presentation, and prosecution of the said claims in this court or to any other court which the said claims may be appealed to or referred to, in compliance with the acts of Congress referring these claims to the Court of Claims, and for such other and further relief as shall appear to the court right and just to the said Shawnee Indians; and this petitioner will ever pray.

JOHNSON BLACKFEATHER,
By CHARLES BROWNELL,
His Attorney-in-fact.

DENVER & BROWNELL,
Attorneys for the Petitioner and the Claimants.

14 UNITED STATES OF AMERICA, }
Washington, District of Columbia, } ss:

Charles Brownell, first sworn, on his oath states that he is the attorney-in-fact for the petitioner, Johnson Blackfeather, and the Shawnee claimants herein described in the above petition; that he has read the above and foregoing petition and knows the contents thereof, and that the same are true of his own knowledge and belief except as to the allegations as are stated on information and belief, and as to those he believes them to be true.

CHARLES BROWNELL.

Subscribed and sworn to before me this 1st day of August, 1892.

[SEAL.] JOHN T. MITCHELL,
Notary Public.

15 (1–482.)

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *August* 2, 1892.

I, George Chandler, acting Secretary of the Interior, hereby certify that the papers hereto attached are true copies of the originals now on file and of record in this department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the department to be affixed the day and year first above written.

[SEAL.] GEO. CHANDLER,
Acting Secretary.

EXHIBIT D.

(Copy.)

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *January* 23, 1867.

SIR: I have the honor to transmit herewith for your consideration sundry papers relative to the claims of Shawnee Indians, of Kansas, for indemnity for losses sustained by them during and since the late rebellion. These papers comprise copies of the letter of Agent Abbott transmitting them to this office and of a communication by the Shawnee council upon the subject, besides the original report of Agent Abbott, before whom the testimony was taken, and the affidavits to establish the claims.

The council base these claims upon the right of the Indians to protection from the Government of the United States while themselves observing their treaty stipulations, and reference is made for precedent to previous acts of Congress recognizing that right, particularly to article 11 of the Shawnee treaty of 1854, by which the sum of $27,000 was provided to be paid for losses of the Shawnees by immigrants passing through their country, and to chapter XL of the Laws of 1860 (vol. XII, Stat. at L., p. 15), by which the
16 Government appropriated $36,711 for the payment of losses of these Indians during the then recent troubles of Kansas. The list of claims now presented, as stated in Agent Abbott's report, amounts to $106,928.75, but on examination of the papers errors are found to exist, a correction of which makes the proper footing $109,746.25.

The evidence presented in order to establish these claims is not, certainly, such as in most cases would be deemed sufficient in the case of claims by white citizens against the Government, but on comparison of these papers with the evidence on file in the matter of payment of some $37,000 under the law of 1860, above cited, it is apparent that the same class and character of affidavits as are *now* presented were *then* deemed sufficient to warrant payment, and perhaps the evidence, under the circumstances, is as good as the nature of the case admits.

Agent Abbott, in his report herewith, comments at length upon the nature and character of the evidence, and your special attention is invited to his remarks and explanations upon that subject. The course taken in 1860, when the Shawnee claims came under consideration by this office, was to refer the matter to the department, with the recommendation that Congress be requested to place an appropriation at the disposal of the department sufficient to pay the claims, so much of the amount to be paid to the claimants as shall be found on further examination to be rightfully due. The same course is now recommended and for the following reasons, to wit:

1st. The Shawnees, as a friendly tribe, strictly regarding their treaty stipulations with the Government and abstaining from acts

of private revenge or retaliation, but relying upon the good faith of the Government, are entitled to its protection under the 14th article of the treaty of 1854 and to remuneration for losses sustained at the hands of its citizens.

2d. It is apparent from an examination of the evidence that the Government had the use for its troops of a large amount of the property taken.

3d. There is an abundant *prima facie* case established to justify the department in asking Congress for an appropriation of a sufficient amount to meet the claims, and then the department can then proceed to take such additional evidence as may be deemed
17 necessary to enable it to do substantial justice in the premises.

Very respectfully, your obedient servant,

(Signed) LEWIS V. BOGY,
Commissioner.

Hon. O. H. Browning, Secretary of the Interior.

(Copy.)

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *January* 30, 1867.

Hon. Thad's Stevens, chairman Committee on Appropriations, House of Representatives.

SIR: I have the honor to transmit herewith a copy of a communication, dated the 23d instant, from the Commissioner of Indian Affairs and accompanying papers submitted by him to this department in relation to claims of Shawnee Indians of Kansas for indemnity for losses sustained by them during and subsequent to the late rebellion, and who rely upon the stipulations of the 14th article of their treaty with the United States of 10th May, 1854, "to have their rights vindicated." These papers comprise copies of the letter of Agent Abbott and of a communication by the Shawnee council upon the subject.

The claims presented to the department amount to $109,746.25, and in view of the facts set forth in the papers now enclosed the subject is commended to the favorable consideration of your committee.

The report of Agent Abbott, a list of the Shawnee claims, and the evidence sustaining the same are also herewith submitted.

Very respectfully, your obedient servant,

(Signed) O. H. BROWNING, *Secretary.*

Order.

It is hereby ordered, that the petition be so amended as to strike out all references to treaties and acts of Congress.

March 13, 1902.

BY THE COURT.

18 II.—*Demurrer. Filed December* 28, 1900.

JOHNSON BLACKFEATHER, Principal Chief, &c.,
v.
THE UNITED STATES. } No. 17210.

And now come the said defendants, by their Attorney General, and demurring to the amended petition in this cause, state as the ground thereof that the said amended petition does not allege facts sufficient to constitute a cause of action.

L. A. PRADT,
Assistant Attorney General.

19 III.—*Opinion of the Court. Filed February* 17, 1902.

Demurrer.

WELDON, J., delivered the opinion of the court:

On the 3d day of August, 1892, the claimant filed a petition in which it is alleged that the petitioner, Johnson Blackfeather, brings suit as the principal chief of the Shawnee tribe or nation of Indians under the provisions of an act of Congress entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation, and for other purposes," approved October 1, 1890, and make said act an exhibit and part of his petition.

It is further alleged as a basis upon which the suit is brought that to said act there is a certain amendatory act entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and freedmen, and for other purposes," approved July 6, 1892, which act is also made an exhibit.

It is further alleged that under and by virtue of the provisions of said acts there is a liability against the United States for depredations committed by white citizens of the United States in the State of Kansas and the Indian Territory upon the property of said Indians at divers times and places in the year 1861 and up to and including the year 1866, amounting in the aggregate as damages to the sum of $109,746.25, as ascertained by the Secretary of the Interior in January, 1867, shown in Exhibit D. An exhibit is then made of the different amounts claimed by other individuals represented by the petitioner, amounting to the sum of $530,945.14, as shown in Exhibit B, made part of the petition.

The alleged depredations consist of the taking and destruction of property by the white citizens of the United States belonging to the different Indians represented in the petition, which property consists of horses, mules, clothing, and other and different varieties of personal property.

It is alleged that said claims arise out of treaty obligations with the United States, to wit, articles 11 and 14 of the treaty of May 10,

1854, and the acts of Congress, to wit, sections 2154 and 2155 of Revised Statutes; that the property was taken from said Shawnee Indians, and depredations committed against them and their property, by said white citizens and soldiers of the United States since and after the time said Indians made and entered into said treaty of May 10, 1854, and while the Indians were located and permanently residing and living peaceably on their own lands in the Indian Territory, to wit, in the year 1861, up to and including the year 1866.

It is further alleged that the said Indians have not, either as individuals or as a nation, sought to be revenged, nor have they or any of them attempted to obtain satisfaction on account of the taking of said property.

To the said petition the defendants have filed a demurrer, in which it is alleged as a ground of demurrer that the petition is insufficient, (1) because it appears upon the face thereof that the court has no jurisdiction, and (2) because said petition does not allege facts sufficient to constitute a cause of action in this regard.

The eleventh section of the treaty of 1854, upon which is predicated the claim of the petitioner, is in substance that, it being represented that many of the Shawnees have sustained damage and loss by reason of emigration passing through their country and because of other causes, in violation of the guaranties made for their protection by the United States, it is agreed that there shall be paid as consideration to the Shawnees the sum of $27,000, to be taken and considered in full satisfaction of such claims and all others of whatever kind, and release all demands and stipulations arising under former treaties, except the perpetual annuities; and all Shawnees who have sustained damage by said causes shall, within six months after the ratification of the treaty, file claims for such damages with the Shawnee agent, to be submitted by him; and the amount in each case approved shall be paid by such agent, provided the whole amount of the claims thus approved shall not exceed the said sum stipulated; and provided further that if such amount shall exceed the sum, then a reduction shall be made *pro rata* from each claim until the aggregate is lowered to that amount.

Article 14 of the same treaty provides, in substance, that the Indians acknowledge their dependence on the Government of the United States, and invoke its protection and care; that they will abstain from the commission of depredations, and comply, as far as they are able, with the laws in such cases made and provided, as they will expect to be protected and to have their rights vindicated.

It is insisted by the defendants that the court has no jurisdiction, unless it be by virtue of the acts of 1890 and 1892, because the claims arose between 1861 and 1866, and are long since barred by the statute of limitations.

It will be seen by the allegations of the petition that the action is not brought to recover a sum due the Shawnee tribe, but as a proceeding to enforce an obligation against the Government for the payment of personal losses of individual Indians.

The aggregate amount claimed in Schedule B of losses embraced

in the petition is the sum of $530,945.14, and it is alleged with reference to such claims that they arise out of treaty relations with the United States, and as rights growing out of such treaties, to wit, articles 11 and 14 of the treaty of May 10, 1854, and the act of Congress, to wit, sections 2154 and 2155, Revised Statutes, and that the property so described was taken from the Shawnee Indians
21 individually, and the depredations committed against them by white citizens and soldiers of the United States since the making of the treaty of May 10, 1854.

The claim of the petitioner, according to the allegations of the petition, is founded upon the liability assumed by the defendant in the eleventh and fourteenth sections of the treaty of 1854, and the right of action, which is by the petition prosecuted, is founded upon the two acts of Congress aforesaid, to wit, that of 1890 and that of 1892.

A very able argument was made by counsel for the claimant to maintain the right of each individual Indian, under the acts aforesaid, to prosecute his individual right in and through the medium of the plaintiff in this cause, who is the principal chief of the Shawnee Indians. Confining the discussion to the right to bring suit in the form of the petition, it is not pretended that the Indians in their tribal or aggregate capacity as an entity were damaged by the alleged depredations of the persons stated in the petition. That being true, one of the questions presented for the determination of the court is as to whether a petition framed upon the theory of the individual right of the Indian can be maintained under the provisions of those statutes.

The act of 1892, seems to have been enacted for the purpose of enlarging the scope of the right given under the act of 1890. But is it sufficiently broad to embrace the individual right of each Indian who may have suffered a depredation at the hands of the persons alleged?

The statute is entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation, and for other purposes," and provides, in substance, that they shall present to the said court all their claims against the United States and the Cherokee nation, or against either or both of them, of any description whatsoever arising out of treaty relations with the United States, rights growing out of such treaties, and from contracts, express or implied, under such treaties made and entered into by and between the said Shawnees and Cherokees, and between them, or either of them, and the United States.

The right to sue, by the phraseology of this statute, is in the assertion of rights growing out of treaties, and for contracts, express or implied, under treaties made and entered into by and between the said Shawnees, Cherokees, and the United States. Can it be said that there has been a treaty, a contract, express or implied, between the United States and the individual Indians, who, through the medium of the principal chief, are now prosecuting these claims?

The attention of the court is called to the fourteenth section, which provides that "the Shawnees acknowledge their dependence on the Government of the United States, and invoke its protection and care. That they will abstain from the commission of depredations and com-

ply, as far as they are able, with the laws in such cases made and approved, as they will expect to be protected and have their rights vindicated." Does this phraseology establish contractual or treaty relations, having the effect of contracts, with each individual Indian composing the Shawnee tribe? Or, rather, is it not a general clause, limited in its effect to the parties to the treaty, to wit, the United States on one side and the Shawnee tribe upon the other?

The plaintiff, by the allegations of the petition, has asserted an individual obligation existing between the United States and each of the claimants, and in order to recover it must appear that such a relation exists.

22 The United States, as the guardian of the Indians, deal with the nation, tribe, or band, and have never, so far as is known to the court, entered into contracts, either express or implied, compacts or treaties with individual Indians so as to embrace within the purview of such contract or undertaking the personal rights of individual Indians.

The acts of Congress referred to by the allegations of the petition and the argument of counsel for the claimant, are not applicable to the claim made by this petition. The condition upon which remuneration to the Indian is to be made under section 2154, Revised Statutes, is not shown to exist in this case. And so it may be said of section 2155 of Revised Statutes, that the condition upon which the Indian is entitled to remuneration out of the Treasury is not shown to exist in the claims made in this proceeding.

The act of 1892 specifies that the Shawnee tribe or band of Indians, whose claims and demands against the Cherokee nation and the United States were referred to the United States Court of Claims for adjudication under the act of Congress passed and approved October 1, 1890, shall present to said court all their claims against the United States. The claims referred to this court under the act of 1890, were the claims of the Shawnee tribe or band of Indians, and not the personal claims of the individual Indians belonging to said tribe or band of Shawnees.

The evident object of the act of 1892, was to enlarge the jurisdiction of this court with reference to the same class of claims as were cognizable under the act of 1890, to wit, the claims of the Shawnee tribe or band of Indians.

It is insisted by defendants' counsel that the statute of limitations bars the right of proceeding. In the view which the court has taken of this case it is not necessary to pass upon that question. The act of 1892 was before the Supreme Court of the United States in the case of *United States v. Blackfeather* (155 U. S., 180), and in that case the Supreme Court said in substance that it was by no means certain that, under the acts of 1890 and 1892, the Shawnees were authorized to recover and collect from the Government any other moneys than those which were claimed in their tribal relation. The money in question was not due the tribe as such, but to certain individual orphans, who claimed to have been defrauded.

It may have been unnecessary for the Supreme Court, in the decision of the question involved in that proceeding, to pass upon the

individual right of the Indian, but the court, in dealing with the question involved in that proceeding, has expressed an opinion indicating the proper construction of the act of 1892, with reference to the rights of the United States and the Indians.

But, waiving all criticism on the form of the proceeding, the fundamental question is, as to whether, under the treaty of 1854, and the Revised Statutes cited by the claimant, any right exists to recover against the United States, founded either upon the treaty or the statutes.

The eleventh article, as has been stated, provides for the payment of a specific amount upon the condition that the claims arising under said section shall, in the aggregate, amount to that specific sum, and that in case such claims do not aggregate that sum, the residue shall be appropriated as the council of the Indians shall direct. That sum has been paid, and this proceeding is not based upon any liability of the United States for the non-payment of any portion of that amount.

In the argument herein it was insisted by claimant's counsel that the fourteenth section, acknowledging the dependence of the Indians and their obligation to abstain from depredation, and the guaranteed protection to the Indians, constitutes a legal basis, upon which the claims can be maintained, assuming that the act of 1892, gave the right of action in this court.

The general guaranty of the Government to protect the Indians, in consideration of their submission to the law, is not sufficient, in the opinion of the court, to constitute the basis of the claim alleged and sought to be maintained by this petition, nor is the right given under the Revised Statutes, and therefore the demurrer is sustained.

23 IV.—*Demurrer Sustained.*

At a Court of Claims held in the city of Washington on the 17th day of February 1902, it was ordered that the demurrer to the amended petition in the above-entitled cause be sustained.

BY THE COURT.

24 V.—*Application for and Allowance of Appeal.*

From the opinion and judgment of the court in the above-entitled cause, rendered February 17, 1902, in favor of the defendants, the claimant by his attorney therein, this 20th day of February 1902, hereby makes application for and gives notice of an appeal to the Supreme Court of the United States.

JOHN- BLACKFEATHER,
Principal Chief of the Shawnee Indians,
By JOHN C. CHANEY,
His Attorney.

Filed February 20, 1902.

Ordered, that this appeal be allowed as prayed for.

BY THE COURT.

February 20, 1902.

25 Court of Claims.

JOHNSON BLACKFEATHER, Principal Chief of the Shawnee Tribe of Indians, for the Use, &c.,
vs.
UNITED STATES.
} No. 17210.

I, John Randolph assistant clerk Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the opinion of the court,—of the judgment of the court sustaining the demurrer, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 15th day of March A. D. 1902.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 18,455. Court of Claims. Term No. 276. Johnson Blackfeather, the principal chief of the Shawnee tribe of Indians, for the use & benefit of the Shawnee Indians, appellant, *vs.* The United States. Filed March 19", 1902.